

1 MORGAN, LEWIS & BOCKIUS LLP
ERIC MECKLEY, State Bar No. 168181
2 M. MICHAEL COLE, State Bar No. 235538
One Market, Spear Street Tower
3 San Francisco, CA 94105-1126
Tel: 415.442.1000
4 Fax: 415.442.1001
E-mail: emeckley@morganlewis.com
5 mcole@morganlewis.com

6 MORGAN, LEWIS & BOCKIUS LLP
JOHN S. BATTENFELD, State Bar No. 119513
7 DONNA MO, State Bar No. 240621
300 South Grand Avenue
8 Twenty-Second Floor
Los Angeles, CA 90071-3132
9 Tel: 213.612.2500
Fax: 213.612.2501
10 E-mail: jbattenfeld@morganlewis.com
11 dmo@morganlewis.com

12 Attorneys for Defendants
The Pep Boys Manny Moe & Jack of California; and
13 The Pep Boys – Manny, Moe & Jack

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 Art Navarro, individually, and on behalf of
all others similarly situated, and as an
18 aggrieved employee pursuant to the Private
Attorneys General Act of 2004,

19 Plaintiff,

20 vs.

21 The Pep Boys Manny Moe & Jack of
California, a California Corporation, The
22 Pep Boys - Manny, Moe & Jack, a
23 Pennsylvania Corporation, and DOES 1-25
inclusive,,
24

25 Defendants.
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Case No. C 07-2633 SI

**NOTICE OF MOTION AND MOTION TO
STRIKE**

[Fed. R. Civ. Proc. 12(f)]

Judge: Hon. Susan Illston
Date: September 21, 2007
Time: 9:00 a.m.
Room: 10

1 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
 2 CALIFORNIA, AND TO PLAINTIFF ART NAVARRO AND HIS ATTORNEYS OF
 3 RECORD:

4 PLEASE TAKE NOTICE THAT on September 21, 2007, at 9:00 a.m., or as soon
 5 thereafter as counsel may be heard in Courtroom 10 of the above-entitled Court, located at 450
 6 Golden Gate Ave., San Francisco, CA 94102, pursuant to Federal Rule of Civil Procedure 12(f),
 7 Defendants The Pep Boys Manny Moe & Jack of California and The Pep Boys – Manny, Moe &
 8 Jack (“Defendants”) will and hereby do move for an order striking the following portions of
 9 Plaintiff’s First Amended Complaint (“Complaint”) on the grounds that the Complaint contains
 10 irrelevant and/or improper matter:

11 ANY AND ALL LANGUAGE CONCERNING INJUNCTIVE RELIEF

12 1. Paragraph 18, page 5, lines 22-24, the words “Further, pursuant to Cal. Bus. and
 13 Prof. Code § 17203, Defendant may be enjoined in any court of competent jurisdiction.”

14 2. Paragraph 35, page 8, line 22, the words “Plaintiff and others similarly situated are
 15 entitled to request injunctive relief.”

16 3. Paragraph 138, page 27, lines 5-9, in its entirety: “Plaintiff, individually and on
 17 behalf of the general public, alleges that at all relevant times Pep Boys’ actions, including but not
 18 limited to Pep Boys’ violations of California law, the California Labor Code, and the FLSA as set
 19 forth herein, constitute a continuing and ongoing unfair and unlawful activity prohibited by Cal.
 20 Bus. and Prof. Code § 17200 et seq., and justify restitution and/or injunctive relief.”

21 4. Paragraph 142, page 27, line 25, the words “and/or injunction.”

22 5. Paragraph 142, page 28, line 2, the words “injunctive relief.”

23 6. Prayer for Relief, paragraph 5, page 28, lines 14-17, in its entirety: “Pursuant to
 24 Cal. Bus. and Prof. Code § 17203, that Pep Boys be preliminarily and permanently enjoined from:
 25 a) failing to pay wages for all hours worked; b) failing to provide Plaintiff mandatory rest periods
 26 and meal periods; and c) failing to pay statutory wages for failing to provide mandatory rest and
 27 meal periods.”

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1-SF/7571855.1

ANY AND ALL LANGUAGE CONCERNING CONVERSION
(INCLUDING PUNITIVE DAMAGES)

(Corresponds to Motion to Dismiss the Twelfth Cause of Action)

Conversion

7. Paragraph 34, page 8, lines 3-13, in its entirety: "Because Pep Boys failed to pay wages, Pep Boys committed the act of conversion over the property (unpaid wages) of Plaintiff and others similarly situated. In refusing to pay wages to Plaintiff, as alleged herein, Pep Boys unlawfully and intentionally took and converted the property of Plaintiff to its own use. At the time the conversion took place, Plaintiff was entitled to immediate possession of the amounts of wages payable. Pep Boys' conversion was oppressive, malicious, and fraudulent. Pep Boys owes Plaintiff and others similarly situated the value of the property at the time of the conversion, interest from that time, and fair compensation for the time and money properly expended in pursuit of the property pursuant to California law, including but not limited to Cal. Civ. Code §§ 3336 and 3337. Plaintiff seeks all wages, interest, and related sums wrongfully converted by Pep Boys. Plaintiff seeks exemplary damages pursuant to California law, including but not limited to Cal. Civ. Code § 3294."

8. Paragraph 36(J), page 10, lines 18-21, in its entirety: "CONVERSION CLASS – Within three years prior to the filing of this action up through and including the present date through adjudication, a class consists of Plaintiff and others similarly situated, who worked for Pep Boys, and whose wages were converted by Pep Boys."

9. Paragraph 39(M), page 12, line 22, in its entirety: "Whether Pep Boys converted property by failing to pay wages."

10. Paragraph 142, page 27, line 28, the words "or converted."

11. Prayer for Relief, paragraph 3, page 28, line 11, in its entirety: "For all wages and other related sums converted by Pep Boys."

12. Prayer for Relief, paragraph 4, page 28, lines 12-13, in its entirety: "For any and all profits, whether direct or indirect, Pep Boys acquired by reason of its conversion, and for all remedies provided in Cal. Civ. Code §§ 3336 and 3337."

Punitive Damages

13. Paragraph 1, page 2, line 7, the words “punitive damages.”

14. Paragraph 16, page 5, line 8, the words “punitive damages.”


15. Prayer for Relief, paragraph 10, page 28, line 10, in its entirety: “For punitive and exemplary damages.”

This motion is based upon this Notice, the accompanying Memorandum of Points and Authorities, the pleadings and records on file herein, and on such other and further argument and evidence as may be presented at the time of the hearing and all matters of which this Court may take judicial notice.

Dated: July 13, 2007

MORGAN, LEWIS & BOCKIUS LLP

By


Eric Meckley
Attorneys for Defendants
The Pep Boys Manny Moe & Jack of
California; and The Pep Boys – Manny,
Moe & Jack